



11 MAY 2007

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In re Application of :
GENTNER et al. :
Application No.: 10/510,973 :
PCT No.: PCT/DE03/01075 :
Int. Filing Date: 01 April 2003 :
Priority Date: 12 April 2002 :
Attorney Docket No.: 2002P06169WOUS :
For: METHOD FOR DETECTING A CHECK-
BACK SIGNAL IN A N OPTICAL
TRANSMISSION SYSTEM

DECISION

This is a response to applicants' "Renewed Request for Withdrawal of Notification of Abandonment" filed 04 January 2007.

BACKGROUND

On 03 May 2005, a Notification of Missing Requirements (FORM PCT/DO/EO/905) was mailed to applicant indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) was required, in that the current declaration was not in compliance with 37 CFR 1.66 or 1.68. The surcharge for filing the oath or declaration after the thirty month period was also required.

On 12 July 2006, a Notification of Abandonment was mailed to applicant indicating that applicant failed to reply to the 905 within the time period set therein.

On 25 July 2006, applicant filed a "Request for Withdrawal of Notification of Abandonment" via facsimile. In a decision mailed on 21 December 2006, applicant was advised that the 25 July 2006 submission was not signed by the attorney of record in the above referenced application and thus, under 37 CFR 10.18(a), the petition was not an acceptable filing.

DISCUSSION

A review of the application file reveals that the original declaration allegedly filed 16 June 2005 under 37 CFR 1.8 is not located in the application file.

The failure of this response to reach the application file resulted in the abandonment of the application.

A review of the copy of the "Response to Notification of Missing Requirements" included with the present petition reveals that the Response included an executed Certificate Of Transmission in compliance with 37 CFR 1.8(a). The Certificate Of Transmission states that the Response was transmitted by facsimile to the USPTO on 16 June 2005.

Where, as here, correspondence transmitted in accordance with 37 CFR 1.8(a) was not received in the USPTO and abandonment results, 37 CFR 1.8(b) states that such correspondence will be considered timely if the mailing party satisfies the following three requirements:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission.

Based on the statements in the present petition, the copy of the Response provided with the present petition, the "Certificate of Transmission" present on the Response, and the facsimile confirmation report, it is concluded that Petitioner satisfied the requirements of 37 CFR 1.8(b). The Response is considered a timely response to the Notification of Missing Requirements. Accordingly, for purposes of determining the timeliness of the submission, the Response has a submission date of 16 June 2005.

The Response transmitted on 16 June 2005 and 04 January 2007 included the authorization to charge Deposit Account No. 19-2179 for the surcharge for filing the declaration after the thirty month period. It is noted, that for all purposes other than timeliness, these materials will be treated as having been filed on 04 January 2007, the date the present petition was filed.

The Notification Of Abandonment mailed 12 July 2006, based as it was on applicants' purported failure to file a timely response to the Notification of Missing Requirements mailed 03 May 2005, is appropriately vacated.

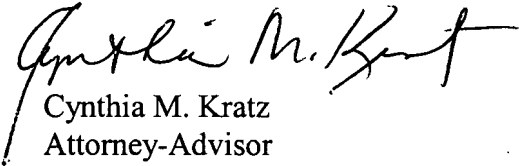
CONCLUSION

The petition to withdraw the holding of abandonment is **GRANTED**.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 12 July 2006 is

hereby VACATED.

The application is being returned to the United States Designated/Elected Office for further processing in accordance with this decision.



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